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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN

---oOo---

CHRISTINE DOUGHERTY, MALCOLM )  
RAYBURN, )

Plaintiffs, )

vs. )

NO. CV 021897

GLENN ROBERT OSMIDOFF, )  
ELIZABETH M. OSMIDOFF, and DOES )  
ONE through TWENTY, inclusive, )

Defendants. )

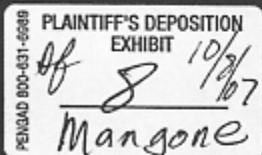
DEPOSITION OF ERNEST H. SPONZILLI, M.D.

TUESDAY, NOVEMBER 26, 2002

CONDENSED  
TRANSCRIPT

REPORTED BY: AMY RAMSEY, CSR NUMBER 10475

ROBERT BARNES ASSOCIATES  
760 MARKET STREET, SUITE 1044  
SAN FRANCISCO, CALIFORNIA 94102



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1 types of things can be seen in people without pain.  
 2 So...  
 3 Q. Oh, I'm sorry. Thank you. Were you  
 4 finished? I didn't mean to interrupt.  
 5 A. So it's of uncertain significance.  
 6 Q. Was there any suggestion of impingement  
 7 either on the neuroforamen or on the cord itself?  
 8 A. No.  
 9 Q. Based upon the MRI studies did you come up  
 10 with a plan of attack for this lady's injuries?  
 11 A. I discussed the treatment options including  
 12 surgery. And she preferred to continue with physical  
 13 therapy.  
 14 Q. Surgery for what?  
 15 A. Surgery for her shoulder. Surgery for her  
 16 neck. We also talked about aggressive conservative  
 17 care.  
 18 Q. Aggressive conservative care being what?  
 19 What do you mean by that?  
 20 A. Epidural steroid injections and facet joint  
 21 rhizotomies and the different options.  
 22 Q. She opted for physical therapy?  
 23 A. That's right.  
 24 Q. Do you know whether or not she had  
 25 undergone surgery on her right rotator cuff for the

1 previous injury?  
 2 A. She didn't give me that history. I don't  
 3 believe she did. I'm not sure though.  
 4 Q. Do you know whether or not she had  
 5 undergone any type of a scan, an MRI or CT, of the  
 6 right shoulder for the previous injury?  
 7 A. I'm not sure.  
 8 Q. Would I be correct in assuming then that  
 9 you have not seen any films of the right shoulder --  
 10 I'm not talking about plain films but MRI or CT of the  
 11 right shoulder -- before the accident involving my  
 12 client?  
 13 A. No.  
 14 Q. You discussed surgery with her for both her  
 15 shoulder and her neck. You do not do that yourself,  
 16 correct?  
 17 A. No.  
 18 Q. Personally, I mean --  
 19 A. I do the aggressive conservative care.  
 20 Q. Right. So if she were to undergo surgery,  
 21 that would presumably be done by someone else here in  
 22 your group?  
 23 A. If she wanted to stay in this office, yes,  
 24 somebody else, not me.  
 25 Q. Right. I understand. And the procedures

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1 that you discussed with her, let's talk about the  
 2 rotator cuff first. What was the procedure that you  
 3 told her you felt could be done if she elected it?  
 4 A. A shoulder arthroscopy.  
 5 Q. And what procedures did you envision for  
 6 the cervical spine or procedure?  
 7 A. A facet joint block followed by a rhizotomy  
 8 if that was helpful.  
 9 Q. And could you explain what the latter of  
 10 those is, please, a rhizotomy.  
 11 A. That's where the joint is innervated by  
 12 heating the median branch which innervates the joint.  
 13 Q. Now, is that something that you do, or is  
 14 that something done by somebody else here?  
 15 A. That's something I do.  
 16 Q. How do you spell rhizotomy?  
 17 A. R-h-i-z-o-t-o-m-y.  
 18 Q. Is that done on an outpatient basis?  
 19 A. Yes.  
 20 Q. What's the charge for that kind of  
 21 procedure, if you know?  
 22 A. \$3,000.  
 23 Q. What is the -- strike that.  
 24 Did you envision a rhizotomy being done at  
 25 both the C5-6 and C6-7 levels --

1 A. Yes.  
 2 Q. -- or just at one?  
 3 A. At both levels.  
 4 A. Several levels.  
 5 Q. Several meaning?  
 6 A. The standard is four to five levels.  
 7 Q. And why would it be done at four or five  
 8 levels if the defects are only at two levels?  
 9 A. We don't know where the defects are. The  
 10 diagnosis is not based on an imaging study but a  
 11 response to a facet block.  
 12 Q. Thank you. So you do a facet block first,  
 13 see what her response is, discover from the response  
 14 to the facet block whether or not it's at that level,  
 15 and then do a rhizotomy at that level?  
 16 A. Yes.  
 17 Q. In other words, the abnormalities described  
 18 in the MRI scan of the cervical spine are not the  
 19 basis for where the rhizotomies would be done?  
 20 A. That's right.  
 21 Q. And so this takes me back then. So the  
 22 rhizotomies are to treat the neck pain of which she is  
 23 complaining and not particular disk defects?  
 24 A. Right.  
 25 Q. Okay. Thank you. And is it \$3,000 per

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1 level, or is it \$3,000 for the whole thing assuming  
 2 you do three levels, say?  
 3 A. That's a rough estimate for the whole  
 4 procedure.  
 5 Q. Thank you. And is it your expectation or  
 6 at least your hope when you do a rhizotomy on a  
 7 patient such as Ms. Dougherty that the rhizotomy will  
 8 correct the problem on a permanent basis having done  
 9 it one time?  
 10 A. It doesn't correct the problem. It can  
 11 provide relief for up to two years. Sometimes after  
 12 the nerve regenerates, the pain does not recur. But  
 13 sometimes it does, and the procedure has to be  
 14 repeated.  
 15 Q. As we're sitting here today has  
 16 Ms. Dougherty had that procedure?  
 17 A. No.  
 18 Q. Has she expressed to you any interest in  
 19 having that procedure?  
 20 A. No.  
 21 Q. When you ordered the physical therapy  
 22 after getting the studies back, the MRIs back, did you  
 23 prescribe that at a particular facility or give her  
 24 her choice again?  
 25 A. It was up to her.

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1 Q. Can you describe what you ordered in the  
 2 way of physical therapy?  
 3 A. Treatment for the shoulder and neck.  
 4 Q. Did you prescribe a particular form of  
 5 treatment for those, or did you leave that up to the  
 6 therapists?  
 7 A. I recommended a combination of modalities  
 8 and exercise.  
 9 Q. What modalities did you suggest?  
 10 A. The standard: heat, cold, massage,  
 11 electrical stimulation, ultrasound, traction.  
 12 Q. And then the exercises would have been both  
 13 there at the therapist's and also home exercises?  
 14 A. Right.  
 15 Q. Did you prescribe those for a particular  
 16 period of time, that is, for six weeks or two months  
 17 or something like that?  
 18 A. I gave her a prescription for eight to 12  
 19 sessions.  
 20 Q. Was it your understanding that after eight  
 21 to 12 sessions you would see her again and evaluate  
 22 whether or not she should continue?  
 23 A. That's the standard.  
 24 Q. Is that what occurred? That is, did she  
 25 come back to you after the first series of treatments

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1 with the physical therapist and you evaluated her?  
 2 A. We reviewed the MRI on March 8th. And I  
 3 gave her a prescription for physical therapy.  
 4 She returned on April 19th. I gave her  
 5 another prescription for physical therapy.  
 6 Then she had several sessions of  
 7 acupuncture here at this office with our acupuncture  
 8 provider, Paula Abdaub.  
 9 Q. Excuse me, Doctor. Let me interrupt for  
 10 just one second. Would Paula Abdaub's records be  
 11 included in your chart?  
 12 A. They're in here.  
 13 Q. Good. Thank you.  
 14 A. And then she came back on June 7. And I  
 15 gave her more acupuncture. And that was the last time  
 16 I saw her, June 7.  
 17 Q. When you saw her on June 7th, we're talking  
 18 2002, correct?  
 19 A. Right.  
 20 Q. When you saw her on June 7th of this year,  
 21 Doctor, did you conduct a physical examination  
 22 yourself?  
 23 A. I did.  
 24 Q. Could you tell me what your findings were  
 25 on physical examination as of June 7th?

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1 A. She had some tenderness about her neck in  
 2 the rear. She had tenderness over her right  
 3 shoulder. She had some painful movement in her  
 4 shoulder, abducting her shoulder at around 90  
 5 degrees. She had some painful cervical extension.  
 6 Her neurologic exam was intact. Basically it was a  
 7 nonspecific exam.  
 8 Q. When you completed your examination on June  
 9 the 7th, did you have a diagnosis of what her problem  
 10 was? I assume with the right shoulder it was a torn  
 11 supraspinatus tendon?  
 12 A. That was pretty clear-cut.  
 13 Q. With respect to the neck, did you have a  
 14 diagnosis in mind?  
 15 A. Chronic neck pain of uncertain origin with  
 16 an MRI showing two disk protrusions of uncertain  
 17 significance.  
 18 Q. And when you say "of uncertain origin," you  
 19 mean within the neck you don't know where the pain is  
 20 coming from?  
 21 A. That's correct.  
 22 Q. As opposed to what caused the problem to  
 23 start with?  
 24 A. That's correct.  
 25 MR. McLORG: Just so we're clear on that.

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<p>1 Q. BY MR. McLORG: When you last saw the 2 patient on June the 7th of this year, did you leave 3 her with any instructions with respect to returning to 4 you for further care?</p> <p>5 A. She was wanting to continue with her 6 present care program. And I indicated to her that if 7 there were any major changes or she wanted to discuss 8 alternative treatment, that she should return if she 9 wanted to continue. She could call me for refills and 10 so forth, that she didn't necessarily have to see me.</p> <p>11 Q. And when you say "refills," we're talking 12 about the physical therapy prescriptions?</p> <p>13 A. Right.</p> <p>14 Q. Do you know has she called for refills of 15 her physical therapy prescriptions since the 7th of 16 June?</p> <p>17 A. I don't have any record that she has. She 18 may have. Sometimes our messages don't get transposed 19 into the chart.</p> <p>20 Q. Would you write a prescription for physical 21 therapy if she - I'm asking you this hypothetically, 22 Doctor. So let me put it that way.</p> <p>23 Assuming the patient called you and asked 24 for another prescription for physical therapy over the 25 telephone, would it be your custom and practice to</p>	<p>1 write a prescription for that, or would it be your 2 practice to do something different from that, perhaps 3 call the PT people or something?</p> <p>4 A. Typically I would grant another 5 prescription. If it becomes clear to me over enough 6 time that nothing is happening, then I might have the 7 patient come in for a follow-up.</p> <p>8 Q. But with respect to your charting, would 9 you expect if you continued to prescribe physical 10 therapy for her there would be a note or a 11 prescription in her chart to that effect?</p> <p>12 A. That's what I hope happens. But it doesn't 13 always happen.</p> <p>14 Q. I understand. Okay. To your knowledge has 15 she seen any board certified orthopedists for the 16 injuries that she suffered in the accident in April of 17 2001?</p> <p>18 A. I don't know whether she has or not. I 19 don't believe so.</p> <p>20 Q. Have you during your treatment of 21 Ms. Dougherty prescribed any type of medication for 22 her, either anti-inflammatories or muscle relaxants, 23 pain medications?</p> <p>24 A. I did.</p> <p>25 Q. And what did you prescribe for her?</p>

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<p>1 A. Anti-inflammatories and topical 2 anti-inflammatories.</p> <p>3 Q. Could you tell me what those were?</p> <p>4 A. June 2002 I gave her Clinoril.</p> <p>5 Q. C-l-i-n-o-r-i-l?</p> <p>6 A. Um-hum.</p> <p>7 Q. And what is Clinoril?</p> <p>8 A. It's an anti-inflammatory.</p> <p>9 Q. Oral or topical?</p> <p>10 A. Oral. I prescribed her Vioxx on March 8 11 and Capsaicin topical on March 8.</p> <p>12 Q. Spell the Capsaicin for me, will you.</p> <p>13 C-a-p...</p> <p>14 A. C-a-p-s-a-i-c-i-n.</p> <p>15 Q. And what is Capsaicin? That's a topical, 16 you said?</p> <p>17 A. Topical analgesic.</p> <p>18 Q. And Vioxx is an anti-inflammatory?</p> <p>19 A. Right.</p> <p>20 Q. The Capsaicin, was that also ordered in 21 March?</p> <p>22 A. Yes.</p> <p>23 Q. Have you prescribed any pain medications 24 for her since the accident in April of 2001?</p> <p>25 A. I don't think so.</p>	<p>1 Q. Do you know how, if at all, she has managed 2 her pain for these injuries?</p> <p>3 A. Through the means that I had provided to 4 her.</p> <p>5 Q. The physical therapy and the acupuncture?</p> <p>6 A. And the medication.</p> <p>7 Q. The anti-inflammatories and the topical 8 analgesic?</p> <p>9 A. Right. She was pregnant, of course. And 10 so she wasn't taking...</p> <p>11 Q. She didn't take anything during the 12 pregnancy, I understand. Right.</p> <p>13 When you last saw her in June of this 14 year - June the 7th I think you said was the date -- 15 what was your prognosis for this lady with respect to 16 her shoulder and her neck?</p> <p>17 A. Fair.</p> <p>18 Q. Can you tell me what you mean by "fair"?</p> <p>19 A. There's some probability that she's going 20 to continue to improve and be well without needing 21 more aggressive treatment.</p> <p>22 Q. Do you believe that's the case with both 23 the cervical spine and the right shoulder?</p> <p>24 A. I think her prognosis is fair.</p> <p>25 Q. Can you state, Doctor, with reasonable</p>

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1 medical probability one way or the other she will  
2 improve or she will not improve without more  
3 aggressive care?

4 A. I think that she will likely have  
5 intermittent problems with her shoulder. There's a  
6 medical probability, given that there's a tear, that  
7 she'll have periods of aggravated symptoms depending  
8 on activity.

9 But she hadn't indicated to me that she  
10 would want surgery for that and that she would rather  
11 live with the symptoms the way they were. I explained  
12 to her that, given that there's a tear, the best  
13 solution would be surgery. She wasn't interested in  
14 that, so...

15 Q. With regard to the cervical spine you think  
16 more probably than not that it will continue to  
17 improve and she will eventually be pain-free?

18 A. She described improvement each time that I  
19 had been seeing her. So it looked like there was a  
20 trend towards her recovering from that aspect of the  
21 injury.

22 Q. Have you for any reason since you started  
23 seeing her for these injuries formulated an opinion as  
24 to whether or not the right rotator cuff tear and the  
25 neck injury which she complained were caused by the

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1 accident in April of 2001?

2 A. I believe that the conditions in her neck  
3 and shoulder were caused by the motor vehicle  
4 accident. I don't have any knowledge or records to  
5 indicate that she had been seeking treatment for  
6 either condition prior to this accident.

7 Q. So, in other words - don't let me put  
8 words in your mouth. But let me see if I understand  
9 what you're saying. In view of the fact that, so far  
10 as you're aware, she was not having neck problems, she  
11 was not having right shoulder problems before this  
12 accident and the fact that she started complaining of  
13 these problems more or less right away after this  
14 accident and there's no intervening injury so far as  
15 you're aware of, your assumption would be that they  
16 would be related to the accident; is that a fair  
17 assumption?

18 A. That's correct.

19 Q. I think that's all I have. Thanks, Doctor.

20 EXAMINATION BY MR. MURPHY

21 Q. Just a few follow-ups.

22 Doctor, you said that she had reported  
23 improvement with each visit to you. I want to ask you  
24 about that. If you look at March 8th, 2002, does your  
25 history note indicate that the patient notes no change

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1 in her condition?

2 A. No change, dull aching in right shoulder.

3 Q. And April 19th, does she again note no  
4 change?

5 A. She wrote no change; that's correct.

6 Q. She wrote that, or that's your note?

7 A. She wrote no change.

8 Q. And can you explain then what you meant  
9 when you said she reported improvement with each  
10 visit?

11 A. Then in June she states neck feels better.  
12 Shoulder still sensitive. And then referring to the  
13 notes from Paula, Christine reports that her neck  
14 symptoms are moderately improved. Christine reports  
15 that her neck and shoulder continue to improve.  
16 Christine continues to have reduced pain in her neck  
17 and right shoulder. Christine's right-sided neck pain  
18 and upper trapezius discomfort are significantly  
19 reduced.

20 Q. Is that the acupuncture note?

21 A. Yeah.

22 Q. When was the last time she was seen by the  
23 acupuncturist?

24 A. July 9, 2002. She made a follow-up July  
25 18, but then cancelled.

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1 Q. Did you discuss with Miss Dougherty any  
2 risks associated with the rhizotomy?

3 A. I talked to her briefly about it. She  
4 wasn't thrilled about the idea of having a six-inch  
5 needle in her neck.

6 Q. What risks did you discuss with her?

7 A. The general risks: bleeding, infection,  
8 increased pain, the rare complications of paralysis.

9 Q. Now, you indicated that the pain relief by  
10 the rhizotomy can last for up to two years and then  
11 the procedure sometimes has to be repeated?

12 A. (Nods head up and down.)

13 Q. If the procedure's repeated, is the cost  
14 the same as the initial procedure, \$3,000.

15 MR. McLORG: Assuming it hasn't gone up in  
16 the meantime?

17 Q. BY MR. MURPHY: Assuming, yes, there's no  
18 inflationary factor in there.

19 A. Or deflationary in the case of Medicare.

20 MR. McLORG: Touche.

21 THE WITNESS: There's a facility fee and a  
22 professional fee. And the facility fee for an hour of  
23 O.R. time is \$2,500.

24 Q. BY MR. MURPHY: That's the same whether  
25 it's the first rhizotomy or the second or subsequent?

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1 A. Right.  
 2 Q. Did you discuss with Miss Dougherty any  
 3 risk of shoulder surgery?  
 4 A. Not in any detail. But both of these  
 5 procedures in general, the shoulder arthroscopy and  
 6 the interventional pain management procedures on the  
 7 neck, they're very well-tolerated, minimal risk. But  
 8 people have general fears about surgery. So she  
 9 didn't want to pursue that.  
 10 Q. Did she tell you she would rather live with  
 11 the pain than go through that procedure?  
 12 A. I don't remember her saying that  
 13 specifically. But each time she had come in I would  
 14 say, well, here are the options and these are the  
 15 general pros and cons. You do have a torn rotator  
 16 cuff. And it's probably never going to be perfect  
 17 unless you do something more direct.  
 18 Q. Did she ever explain to you why she did not  
 19 want shoulder surgery?  
 20 A. I don't remember specifically. But in  
 21 general here's a 42-year-old woman who had just gotten  
 22 married, who just had a baby. Her ability to do this  
 23 kind of thing is affected by those issues.  
 24 Q. If she had undergone the shoulder surgery,  
 25 would you have prescribed additional physical therapy

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1 over and above what you had previously prescribed?  
 2 A. Well, her treating surgeon would typically  
 3 have her do a course of postop care.  
 4 (Brief interruption.)  
 5 THE WITNESS: So any perfect surgery can go  
 6 bad if you don't have good postop therapy. And that's  
 7 probably six weeks out of her life. Right now it's  
 8 not an opportune time.  
 9 MR. MURPHY: Okay. Thank you. Nothing  
 10 else.  
 11 FURTHER EXAMINATION BY MR. McLORG  
 12 Q. Just one quick follow-up, Doctor. You were  
 13 reading the acupuncturist's notes. Could you just  
 14 give us the first and last dates of the notes you were  
 15 reading?  
 16 A. Her first visit here for acupuncture with  
 17 Paula was April 26, 2002, then May 7, May 21, May 28,  
 18 June 4, June 6, June 11, June 13, June 27, July 2nd,  
 19 July 9.  
 20 Q. Thank you very much. That's all I have.  
 21 (Time noted: 8:07 a.m.)  
 22 —oOo—  
 23  
 24  
 25

\*\*\* Notes \*\*\*

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1 I declare under penalty of perjury that the  
 2 foregoing is true and correct. Subscribed at  
 3 \_\_\_\_\_, California, this \_\_\_\_\_ day  
 4 of \_\_\_\_\_, 200\_\_.

5  
 6  
 7 ERNEST H. SPONZILLI, M.D.  
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## CERTIFICATE OF REPORTER

1  
 2  
 3 I, AMY RAMSEY, a Certified Shorthand  
 4 Reporter, hereby certify that the witness in the  
 5 foregoing deposition was by me duly sworn to tell the  
 6 truth, the whole truth, and nothing but the truth in  
 7 the within-entitled cause;  
 8 That said deposition was taken down in  
 9 shorthand by me, a disinterested person, at the time  
 10 and place therein stated to the best of my ability,  
 11 and that the testimony of said witness was thereafter  
 12 reduced to typewriting, by computer, under my  
 13 direction and supervision;  
 14 I further certify that I am not of counsel  
 15 or attorney for either or any of the parties of the  
 16 said deposition, nor in any way interested in the  
 17 events of this cause, and that I am not related to any  
 18 of the parties thereto.  
 19 IN WITNESS WHEREOF, I have hereunto set my  
 20 hand, this 4th day of December, 2002.  
 21  
 22  
 23  
 24  
 25

AMY RAMSEY  
 CSR NUMBER 10475

\*\*\* Notes \*\*\*